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CONSTITUTIONAL PROHIBITION OF LOCAL AND SPECIAL LEGISLATION IN PENNSYLVANIA.

(*Second Paper.*)

Scarcely had the members of the convention completed their labors and gone to their homes when the legislature began to seek means of escaping either wholly or in part from the fetters, which had been put upon it. The members were forbidden to pass any local or special law concerning cities. They felt, however, and perhaps rightly that it would be impossible to pass general laws which would serve to supply a scheme of municipal government suitable for cities of all sizes. Therefore they passed the act of 1874, which divided the cities of the state into three classes upon the basis of their population, the theory being that a law which applies to all cities of a certain size in the state is general and not special.

By the terms of the act all cities of over 300,000 inhabitants should constitute the first class. Those between 100,000 and 300,000 the second class. Those between 10,000 and 100,000 the third class. Philadelphia was the only

city of the first class. The act then proceeded to legislate for cities of the first class, or in fact for Philadelphia.

The constitutionality of the act was promptly attacked in *Wheeler* v. *Philadelphia,* and the case reached the Supreme Court in 1875. It is reported in 77 Pa. 338. Mr. Justice Paxson delivered the opinion of the court. The precise question raised was whether it was lawful for the legislature to authorize an increase of the municipal indebtedness of cities of the first class, which in this case meant Philadelphia. The court said:

"If the complainants were right in their position in regard to the classification of cities, and that the act classifying cities is a special act, applicable to Philadelphia alone, it would not help them. The legislature is authorized by the express terms of the constitution, to empower by special act a city to increase its debt. The language of that instrument is, 'but any city, the debt of which exceeds 7 per centum, may be authorized by law to increase the same.' It was entirely competent for the legislature to have passed an act authorizing the City of Philadelphia, by name, to increase its debt."

From this language it is seen that the question was decided in the affirmative for an unassailable reason. This was quite sufficient ground for the decision. The court, however, went very fully into the question of the constitutionality of such a classification as was provided in the act and upheld it.

The decision as to this point was put upon the broad ground that legislation for a class of cities is not special and the fact that there was but one city of the first or second class was a mere incident which would be changed in future by the natural development of the smaller cities.

The court said that the constitution itself sanctions classification about kindred subjects and recognizes the necessity for it. The true question, it was said, "is not whether classification is authorized by the terms of the constitution but whether it is expressly prohibited." There being no such express prohibition, it was thought justifiable to assume that the framers of the constitution contemplated such a possibility when the clause forbidding local and special legislation was incorporated into our constitution.

The strongest plea which moved the court, however, seems to have been the plea of necessity. The following language of Mr. Justice Paxson will explain their views on this phase of the question:

"If the classification of cities is in violation of the constitution, it follows, of necessity, that Philadelphia as a city of the first class must be denied the legislation necessary to its present prosperity and future development, or that the small inland cities must be burdened with legislation wholly unsuited to their needs. For if the constitution meant what the complainants aver that it does, Philadelphia can have no legislation that is not common to all other cities of the state. And for this there is absolutely no remedy, but a change in the organic law itself.

This is a serious question. We have but to turn to the statute book to realize the vast amount of legislation in the past, special to the city of Philadelphia. We speak not now of what is popularly known as special legislation, private acts, etc., but of proper legislation affecting the whole city, and indispensable to its prosperity. We may instance the laws in regard to the quarantine, lazaretto, Board of Health, and other matters connected with the sanitary condition of the city, the laws in regard to shipping and pilotage, as affecting its commerce; laws concerning its trade, such as those that relate to mercantile appraisers, inspectors of flour, bark, beef and pork, butter and lard, domestic distilled spirits, flaxseed, leather, tobacco, petroleum; and the laws in regard to building inspectors; the storage and sale of gunpowder; laws affecting its political condition, as by the division and subdivision of wards, and the establishing of a ratio of representation in councils. We have but to glance at this legislation to see that the most of it is wholly unsuited to small inland cities, and that to inflict it upon them would be little short of a calamity. Must the city of Scranton, over one hundred miles from tide-water, with a stream hardly large enough to float a batteau, be subjected to quarantine regulations, and have its lazaretto? Must the legislation for a great commercial and manufacturing city, with a population approaching 1,000,000 be regulated by the wants or necessities of an inland city of 10,000 inhabitants? If the

constitution answers this question affirmatively, we are bound by it, however much we might question its wisdom. But no such construction is to be gathered from its terms, and we will not presume that the framers of that instrument, or the people who ratified it, intended that the machinery of their state government should be so bolted and riveted down by the fundamental law as to be unable to move and perform its necessary functions."

Before assuming that classification is constitutional, as under our decisions it undoubtedly is, and proceeding to the discussion of the limitation of the doctrine, it is proper to briefly examine the views of the framers of the constitution, to see whether they in fact did contemplate the possibility of classification and if so whether in their opinion it would be proper. It may be thought a useless proceeding to resurrect such a question now when our decisions are unanimous in upholding classification, but it is here referred to for two reasons. First for its historical interest and second because even if the main principle be established, there is yet the very vital question of the extent of the doctrine and the views of these men are always pertinent in deciding that question.

The evil and the remedy contemplated by the convention have already been discussed. The purpose being to prevent the promotion of private interests for corrupt motives, it may be said, on the one hand, that that purpose is very largely met by preventing legislation for particular persons or localities, though permitting it for classes and, on the other, that to permit classification at all throws such a discretionary power into the hands of the legislature, that it can with impunity enact a great deal of legislation really local and special in its nature.

At the time when the decision of *Wheeler* v. *Philadelphia,* was rendered, the former argument was entitled to the greater weight, inasmuch as the vicious laws enacted prior to that time were laws dealing not with classes but with individuals, and hence any danger from legislation applying to the former would be purely speculative.

On first reading of the clause in question, Mr. Mantor arose to express his views. He does not even by indirection

touch upon the question of classification, but by careful reading of his language one can perhaps form a view as to whether he would have deemed it compatible with the prohibition. The fact that with one exception, I think, the members did not discuss it would indicate that they did not directly contemplate that it would be attempted. Mr. Mantor said:

"Now, sir, nothing will strike the people of this state with as much force as this question of barring special legislation, that the people feel more interest in this one subject than any other which this convention will be called upon to decide. I would therefore say that equal privileges for all, exclusive privileges for none, should be the sentiment of every citizen of this Commonwealth. If we depart from this principle we are at sea without a chart or compass. A general law granting privileges to incorporate companies, is made for the benefit of the people of the state; the privileges granted thereby may be enjoyed by all the people of every locality in the state. There can be no special monopoly created by pursuing this course. No company can be organized under general laws which can occupy any particular locality or carry on any particular kind of business to the exclusion of all other companies for the same purpose. I am in favor of adopting a principle into our constitution which will permit all people to combine with the same privileges. I would not give to the legislature, through this constitution, power to grant privileges to which all persons are not equally entitled under general law. I would place a restriction on the legislation in this Commonwealth, and say to it, thus far and no farther, so that if one man points his finger at you, and says, 'I have a right and privilege under such a law,' you can answer him, 'so have I.' . . .

"We have not been studying the interests of all the people, but through these special grantings we have been widening the breach that has divided us. Philadelphia, the first city in the state, and second to but one in the Union, is beginning to wake up to a broader idea of commercial wealth. So far as this state is concerned, it has been but a few years since she began to realize that, west of the Alleghenies, in this state, were some possessions enclosed in the Commonwealth, of

which she but formed a part, and where there was large business interests in which she should long since have been a partner.

"But, as a Pennsylvanian, I take great pride in speaking of Philadelphia as our city, and can but hope that every law passed, after adopting this constitution, shall be so broad, so completely affecting all interests on every subject of like character over the state, that it will cement our commercial relations, and that in the future we shall act with a oneness of purpose for the good of all."—II. Constitutional Debates, 590, 591.

The last paragraph quoted would seem to indicate that Mr. Mantor thought general laws would govern both Philadelphia and the cities west of the Alleghenies, as of course they do for some purposes.

Two amendments were offered and adopted during the course of the discussion of this section which are pertinent. As first reported all local or special legislation "relating to or incorporating ferries or bridges" was forbidden. It was objected that this would prevent the legislature from enacting laws relating only to bridges crossing navigable streams on the boundary between this commonwealth and other states. It does not appear incontestably whether the objecting member, Mr. Lear, thought a separate act of legislation for each bridge would be necessary or whether he thought a law applying to all such bridges would be satisfactory for them, but forbidden as being local. If the former was the case there is no special significance in his amendment. But if the latter was his supposition, then it would seem clear that without the exception (which was incorporated in the constitution), any law relating to all bridges over such bounding streams, would be unconstitutional.

Mr. Lear's remarks supporting his amendment are reported in II. Constitutional Debates, 595. Mr. Struthers in support, said:

"Mr. Chairman, I think we ought to have the amendment of the gentleman from Bucks (Mr. Lear) incorporated in that paragraph. It may be that New Jersey would be willing, under the compact existing between that state and this, to pass a law with relation to bridges crossing the Delaware

River, and that they would say in that law that it shall take effect when similar legislation shall be passed by the State of Pennsylvania. Without this amendment, if you adopt this clause, that legislation by Pennsylvania to correspond with the legislation in New Jersey, could not be had."—II. Constitutional Debates, 597.

Mr. Cochran's remarks were as follows:

"Mr. Chairman: I understand the amendment offered by the gentleman from Allegheny (Mr. D. N. White), which contains the words 'within this state,' to be intended to meet the objection with regard to this provision interfering with the building of bridges across the Delaware River, between the states of New Jersey and Pennsylvania. I understand the idea to be to so limit this paragraph as not to prevent the legislature from authorizing the building of bridges in common across the Delaware or any other stream which is the common boundary between this and any other state. If it has that effect the amendment of the gentleman from Bucks is entirely proper."—II. Constitutional Debates, 597.

This clause as finally adopted is:

"The General Assembly shall not pass any local or special law, relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between this and any other state."

The bridges excepted form a distinct class. As the exception marks the extent of the power, it may be argued that without the exception no laws relating to the excepted class could be enacted. This would indicate that in the case of the incorporation of bridge companies at least classification is forbidden. Such a classification in the case of bridges has, however, been upheld.

The following colloquy which took place between several members serves to show what their ideas were as to the effect of the prohibition of local or special legislation fixing the rate of interest:

"The clerk read as follows: 'Fixing the rate of interest.'

"Mr. Darlington.—Mr. Chairman: I want to know from the committee on legislation what that means?

"Mr. Corbett.—Mr. Chairman: It means to prohibit all

special laws fixing a special rate of interest, not to allow interest to be fixed by anything except a general law.

"Mr. Darlington.—Mr. Chairman: I want still to inquire whether the purpose is to prohibit a city, county or borough from borrowing money at one rate of interest, where they can get it at that rate, and to allow to another city to borrow at another rate of interest.

"Mr. Corbett.—Mr. Chairman: I apprehend it applies to a city, corporation or person, to every person alike, and to every person, corporation, city or borough; it says no rate of interest shall be fixed by special law. The law must be general.

"Mr. Darlington.—Mr. Chairman: Then I submit that it is impracticable in its operations, and for this reason: You cannot obtain money for a city like Corry or like Pittsburg even, at the same rate at which it can be obtained in Philadelphia. This is an attempt it seems to me, to deny to a city or town with less ability, and less power, and less capacity, to borrow money at all, unless it can do so at a rate at which it is impossible to obtain it.

"What is the use of such a clause? What good is to be attained by it? Why should not any community be allowed to borrow money from its citizens, and why should not the citizens be allowed to loan it to that community at any rate of interest they can agree upon, whether it is 5 or 7 per cent? Why should we prohibit them from borrowing at all because they cannot get it at the same rate that other cities can? . . .

"Mr. Mann.—Mr. Chairman: I desire only to say one word in addition to what has been said by the gentleman from Allegheny, and that is that this clause was agreed upon by the committee on legislation to prevent the very thing that the gentleman from Chester (Mr. Darlington) advocates. The committee thought that it was better that the legislature, by a general law, should allow any city to contract such rates of interest as it has authorized them to do under a general act, and not to allow one city to pay one rate of interest, and another city a different rate. That was the very purpose we designed to prevent. We want, by a general act, to define this whole question of interest upon some sensible plan, which has yet never been done. There

are now in this state saving funds and banks having rates of interest from 6 all the way up to 10 per cent, according to the charters granted by the legislature. One year the legislature will pass these charters and allow the banks to charge 10 per cent interest per annum, and the next pass another law, restricting them to 6 per cent. Such banks are in existence in this state, and it should be remedied, and it cannot be remedied by any other provision than just this one. I have heard it stated that we are to have a report from another committee which will supplant this; but until we have it, let us adopt this paragraph as it stands."—II. Constitutional Debates, 608.

The language of these gentlemen leaves little room to doubt that they thought all cities, large and small, must be governed by one law fixing the rate of interest and yet the power to borrow money and pay interest on it is a corporate power and under our decisions any law relating to the corporate powers of cities of a particular class is valid.

Upon the second reading, the clause prohibiting local or special legislation "relating to cemeteries, graveyards or public grounds" was amended by adding the words "not of the state." Mr. Biddle then proposed another amendment, and the following discussion took place:

"Mr. Biddle.—Then I move to amend the amendment by adding the words 'or of public municipalities.'

"Mr. Harry White.—I regret to differ with the distinguished gentleman from Philadelphia (Mr. Biddle), to whose views I always give great deference, but I would suggest to him that it was just to meet this class of cases that this section was designed. It was to prevent any local or special legislation relative to particular localities, and to require them to conform, as far as practicable, to a general law. I apprehend there will be no difficulty whatever in framing a general law on this subject that will wisely and equitably regulate these matters for municipalities.

"Mr. Biddle.—I am not at all clear that the reasons given by the distinguished gentleman from Indiana meet the case that I am about to put. It may be very expedient to pass a special law relating to the municipality of Philadelphia or Pittsburg, or of any other city or borough of the state, and

I cannot see any objection to it. It would be impossible to meet these cases by general law. I cannot understand how a general law would meet the particular necessities which would be required here in Philadelphia, or in Pittsburg, or in Erie, or in other parts of the state."

There might be something, for instance, eminently proper with regard to the park of this city which would not apply to any other part of the state. Why should not such a law be passed? It is to be supposed that the representatives of the people from a particular locality will carefully watch the legislation respecting that locality and prevent injurious legislation. It may be most expedient to have a special law passed, and yet this paragraph would prevent it.

"On the question of agreeing to the amendment to the amendment, a division was called for, which resulted twenty-one in the affirmative. This being less than a majority of a quorum, the amendment to the amendment was rejected."—V. Constitutional Debates, 257.

If a law were passed giving cities of the first class certain powers over their public lands, it would fully meet Mr. Biddle's objections, yet he did not, apparently contemplate such a possibility.

During the discussion concerning the rate of interest occurred the only direct reference to the subject of classification that I have seen in the report of the debates. The part of it which is material is as follows:

"Mr. Dallas.—But sir, if it were otherwise—if it were true that we cannot continue to enjoy those conveniences which we have under corporate power, and cannot create others without this special inducement to people to put their capital into corporate enterprises—still this paragraph of the section should pass, because it would not prevent the legislature from hereafter passing any general law—applicable alike to individuals or corporations, by which any man or association of men seeking to build a railroad, or to establish a line of steamships, if you please, might go into the market and offer special inducements to lenders in order to borrow money. There would be nothing in this paragraph that would prevent it. The legislature, in their wisdom, if they discover that special interests of the state require this

sort of fostering in order to enable them to obtain necessary capital, can at any time say so. If they should think—I do not say so now—but if hereafter the legislature should think it necessary to say that for the use of every railroad enterprise (corporate or otherwise) 10 per cent may be given for money, they may do so as well after the adoption of this paragraph as now.

"I want this paragraph adopted, because as the constitution stands now, the power to obtain this special privilege is not dependent upon the class of the enterprise but upon the character of the individual who asks it. Corporations can obtain the right to borrow money at 10 per cent, if they choose, and for any purpose whatever; whereas nobody ever heard of any individual procuring the same privilege, for any object under the sun. What is the reason for this distinction? Why should this privilege be made to depend, in the future as in the past, upon whether those who desire it are incorporated or not?"—II. Constitutional Debates, 261.

"Mr. Darlington.—Mr. President: I do not propose to enter at length into the argument on this question; but I wish to point out one of the errors into which the gentleman from Philadelphia, in my apprehension, falls. He proposes to abolish all special legislation on the subject of capital. In other words, no association of individuals for any improving purpose, whether it be to develop the country in mines, manufactures, or in any other manner, shall ever have the privilege to acquire capital by paying a larger amount of interest than any individual may pay; and he says, should it become necessary, that they should have relief of this kind.

"If I understand the gentleman from Philadelphia, he proposes to get over the difficulty of special legislation by allowing the legislature to say that all railroad companies may borrow, or all improvement companies may borrow, or all canal companies may borrow, but you shall not allow the A. or B. or C. company to borrow; and that is the way by which he says he gets rid of the difficulty of special legislation. Now I want to call the attention of the convention to the idea which I think is well founded, that no such legislation could be permitted for an instant without being obnoxious to the charge of special legislation, legislation for a class of individuals.

"Mr. Dallas.—May I be allowed to explain.

"Mr. Darlington.—I have no objection.

"Mr. Dallas.—The gentleman has entirely misunderstood me. My suggestion was that the legislature might by general law provide that any particular industry or class of business might have a special rate if in the wisdom of the legislature it was proper, but not that any class of individuals, as a corporation, of men over thirty years of age.

"Mr. Darlington.—I understand the gentleman perfectly, and I think I understand the answer to it. The moment you allow the legislature to favor a particular class of interest, you are favoring the individuals engaged in that class and pursuit. In other words, you are specially legislating for a set of individuals engaged in a particular business, whether it be in the floating of steamships, the making of railroads, the developing of iron ore or coal or other thing. You may aid the interest of coal or iron or commerce, but you shall not aid the interest of railroads.

"Now, I take it this convention will understand what any man who reads can understand, that you cannot under any prohibition of special legislation evade that provision by saying that cities of a certain class or population shall be allowed to borrow, or that persons engaged in the business of mining for coal or iron may borrow, or that persons engaged in the business of building railroads may borrow at a higher rate of interest than others. This is all special legislation and will be entirely prohibited by such a clause in the constitution. Gentlemen must not fancy, therefore, that they can prohibit the legislature from doing what is right to be done, if it is right to do that which I suppose everyone will agree it is right to do—allow even members of a corporation to borrow at a higher rate of interest than others may choose to give."—II. Constitutional Debates, 262.

"Mr. Knight.—Mr. President: I am in favor of leaving this paragraph as originally passed, and I trust the convention will allow it to remain as it is. I believe it is the interest of the people of the state that we should have a uniform general law on the subject, that every man and every corporation should be put upon the same platform, and when the people are sufficiently enlightened as to the difficulties under which

we are now laboring, they may come to our rescue and give us something that will benefit all alike. I trust that the reconsideration will not be carried and that the paragraph will remain as originally passed by the convention."—II. Constitutional Debates, 263.

"Mr. Mann.— . . . The effect of this section will be simply to prevent special legislation in favor of particular classes. I think this convention has committed itself to that principle, that hereafter all classes are to stand upon the same footing. Individuals are obliged to go into the market and sell their bonds now, and have been ever since the law regulating the rate of interest was passed, and there is no more difficulty in railroads doing that than there is in other individuals doing it. It does seem to me, that all the objections raised to this paragraph are groundless, and that we shall be stultifying ourselves if we refuse to adopt it as it stands."—II. Constitutional Debates, 264.

Mr. Dallas' remarks disclose the fact that he thought laws relating to all corporations engaged in a particular business would be general. Mr. Darlington repudiated this view and was particulary emphatic in his statement that law for classes of cities could not be tolerated. Messrs. Knight and Mann evidently agreed with him.

That a law applying, for instance, to all insurance companies is general if appropriate for them alone seems very clear; it is difficult to see upon what ground the opposite view can be argued. There is no reason, save the remarks just quoted, to believe that there was any opposition to such a view among the members of the convention.

The theory for upholding the classification of cities is not so plain. The foregoing remarks of the members tend to the view that if they contemplated such a classification they disapproved of it. While under the decisions in our own state and in other states whose constitutions also forbid local and special legislation, classification of cities is fully upheld, yet when we come to discuss the limitation of the doctrine, it may be valuable to remember that the evidence points to the conclusion that the constitutional convention did intend to restrain the legislature from making such a classification.

The theory upon which the doctrine of classification in

general rests is undoubtedly a sound one. The requirement that all laws upon certain subjects shall be general, does not mean that every law shall affect every person and place in the Commonwealth. It means merely that it shall operate equally upon all persons or places to which it appropriately applies. Thus a law applying to all male citizens over twenty-one years of age, does not affect everybody in the Commonwealth, and yet will be valid provided its subject matter be such that it could not appropriately apply to other persons. So a law applying to all cities over a certain population is said to be general, because it extends to all cities of that population in the commonwealth without discrimination, and the fact that there may be but one city of that size, has been held immaterial. Again it should be noticed, the act must be of such a nature that it cannot, without being burdensome and oppressive, apply to cities of a different size.

An excellent definition of a general law is given in the New Jersey case of *Van Ripper* v. *Parsons*,[1] where it was said: "A law framed in general terms, restricted to no locality, and operating equally upon all of a group of objects which, having regard to the purpose of the legislature, are distinguished by characteristics sufficiently marked and important to make them a class by themselves, is not a special or local law but a general law, without regard to the consideration that within this state there happens to be but one individual of that class, or one place where it produces effects."

In *Wheeler* v. *Philadelphia*,[2] Mr. Justice Paxson said: "Without entering at large upon the discussion of what is here meant by a 'local or special law,' it is sufficient to say, that a statute which relates to persons or things as a class, is a general law, while a statute which relates to particular persons or things of a class is special, and comes within the constitutional prohibition."

These remarks apply rather to the word "special" than "local." Local legislation is properly legislation which is permanently confined to a particular locality. Any such

[1] 40 N. J. L. 123.
[2] *Supra.*

law is bad. There can be no question of classification here in a proper sense. The very essence of the theory of classification of cities is that the law deals with corporate powers delegated to them, not as occupants of particular territory, but as municipal corporations which, by reason of their size, have peculiar needs, and that all cities wherever situated are entitled to the benefits of the law. On the other hand, a local law is one whose operation is confined to a particlar locality as such. If we will keep this thought in mind it will serve to clear up some apparently obscure distinctions between various laws which have from time to time been placed upon the statute books.

By a study of *Wheeler* v. *Phila.*,[3] we can see that the limits to the theory of the classification of cities were made no less plain than the theory itself.

These limitations as there explained are:

1. The class to which the law applies must be so distinguished and set apart from other cities that legislation for the class affected would be burdensome and oppressive for the others.

It follows that if the law can operate equally upon all classes without being burdensome and oppressive, then if confined to a single class it is unconstitutional.

2. The classification must provide for the future, *i. e.*, must be of such a character that other individuals may enter the class by natural development and may thereby come under the benefit of the law.

This is indicated by the language of Mr. Justice Paxson in *Wheeler* v. *Phila.*, where he says:

"Legislation is intended not only to meet the wants of the present, but to provide for the future. It deals not with the past, but in theory at least, anticipates the needs of a state, healthy with a vigorous development. It is intended to be permanent. At no distant day Pittsburg will probably become a city of the first class; and Scranton, or others of the rapidly growing interior towns, will take the place of the city of Pittsburg, as a city of the second class. In the meantime, is the classification as to cities of the first class

[3] *Supra.*

bad because Philadelphia is the only one of the class? We think not. Classification does not depend upon numbers. The first man, Adam, was as distinctly a class, when the breath of life was breathed into him, as at any subsequent period. The word is used not to designate numbers, but a rank or order, of persons or things; in society it is used to indicate equality, or persons distinguished by common characteristics, as the trading classes; the laboring classes; in science, it is a division or arrangement, containing the subordinate divisions of order, genus and species."

In *Davis* v. *Clark*,[4] this second limitation was disregarded. In that case it appeared that an act had been passed which excluded from its terms all counties having more than two hundred thousand inhabitants. It was contended that the act was within the decision of *Wheeler* v. *Philadelphia,* and should be upheld as a classification of counties. But the court decided that the act was local because it permanently *excluded* Philadelphia and Allegheny counties from its terms. If counties by natural growth should become members of the excepted class they would thereby lose instead of gain the benefit of the law. And what seems to have weighed most with the court, there was no provision by which Philadelphia or Allegheny Counties could ever become subject to the law, inasmuch as it could not be assumed that they would ever grow less in population.

Mr. Justice Mercur said:

"By the terms of this act, the laborers in the two most populous counties of the state, although they perform the same kind of labor, are as effectually debarred from its operation as if those counties were designated by name, or were outside of the boundaries of the state. It gives to laborers in some counties rights, powers and privileges, which it denies to the same class of laborers, performing the same kind of labor in other counties. It is not only local and special, but odious in its discrimination. It is in most clear and palpable violation of the constitution, which expressly withholds from the legislature all power to create or extend a lien by a local and special law.

[4] 106 Pa. 377 (1884).

"The difficulty here is not that of classification only; within reasonable limits, and for some purposes classification is allowable. It has been sustained on the basis of population of counties on the assumption that those having a small population, may ultimately have one much larger. Here the larger are excluded. We cannot assume that their population will ever be reduced to less than the number named. They are, therefore, practically and permanently excluded by the intent and purpose of this act, which is special in its terms and local in its effect."

It would seem to follow from this decision that any law which *excludes* certain portions of the commonwealth from its terms, under such circumstances that there can be no reasonable supposition that the excluded portions will ever become subject to the law, is unconstitutional, *e. g.,* a law excluding all cities or counties above a certain population, because it makes no provision by which the excluded portion may ever enjoy the benefits of the legislation, and because such a law cannot in any just sense be said to be classification at all. Its plain object is not to legislate for the benefit of any particular class but to merely exempt from its terms certain localities. This clearly is not within the meaning of the classification theory. In *Morrison* v. *Bachert,*[5] an act excepting from its terms counties of more than 150,000 and less than 10,000 inhabitants was declared to be unconstitutional. Mr. Justice Paxson said:

"That the act in question is in direct conflict with the constitution is too plain for argument. It is only necessary to read the title to this act to see this. It excludes perpetually from its operation all counties having a population of over 150,000 inhabitants. This makes it a local law. If it can exclude Philadelphia and Pittsburg, it may exclude every other county in the state but the one county seeking such special or local legislation."

In *City of Scranton* v. *Silkman,*[6] an act gave certain rights of appeal to litigants in all counties of less than 500,000 inhabitants. It was shown that in all counties

[5] 112 Pa. 322 (1886).
[6] 113 Pa. 191 (1886).

over 500,000 inhabitants, such a right of appeal already existed, and hence there was a valid reason for the exception, but the court said this fact could not save the law. Mr. Justice Green said:

"The right of appeal, asserted by the defendant in error in this case, is given only to the owners of real estate in counties of less than 500,000 inhabitants. The act of twenty-fourth of May, 1878, which gives this right is therefore of limited application, and comes within our ruling in the case of *Davis* v. *Clark,* in which he held that the exclusion of a single county from the operation of the act makes it local. There is, no doubt, much force in the consideration that the only county which is now excluded has a system of appeal of its own, and the present law practically makes the right general which was before local. But the difficulty we experience is that we cannot consistently hold a principle of construction applicable in one case and not applicable in another where the same conditions exist. It is perhaps unfortunate that we are obliged to apply the doctrine of *Davis* v. *Clark,* to the present case, because we thereby deprive a large class of citizens of a valuable privilege. But the remedy is with the legislature and not with us."

In *Wilkesbarre* v. *Meyers,*[1] an act enlarging the civil jurisdiction of justices of the peace except in cities of the first class, was upheld because the constitution itself excepts Philadelphia from the power of the legislature in this respect. The court said the act would have been valid had Philadelphia, instead of cities of the first class, been excepted, and they construed the phrase to mean Philadelphia in fact and thus upheld the law. It was also stated by the court that had it not been for the constitutional exception the act so drawn would undoubtedly have been invalid.

Not only will an act permanently excluding a portion of the commonwealth from its operation be unconstitutional because there can be no movement from one class to another, but also any law which, though based upon a pretended classification in reality, can apply to but one locality either at present or in the future.

[1] 113 Pa. 395 (1886).

In *Perkins* v. *Philadelphia*,[8] the court declared unconstitutional the act of May 24, 1893, which was entitled:

"An act to abolish commissioners of public buildings and to place all public buildings heretofore under the control of such commissioners, under the control of the department of public works in cities of the first class."

The act as its title indicates applied only to cities of the first class, which had at the date of its passage a public building commission. Obviously the only city to which the act ever could apply was Philadelphia, as it was the only city of the first class which at the date of the passage of the act had such a commission.

Mr. Justice Dean said, *inter alia.*

"The plaintiffs further aver that this bill violates section 7, article iii, of the constitution: 'The general assembly shall not pass any local or special law . . . regulating the affairs of counties, cities, townships, boroughs or school districts.'

"This act purports to be a general law applicable to cities of the first class. We have held, and now adhere to it, that the legislature may lawfully classify cities for corporate purposes, and that an act to promote such purposes is not local or special, merely because, at the date of its passage, there was but one city to which it applied. But it has been decided in case after case, since the constitution of 1874 went into effect, in positive unmistakable language, that if the act was intended to apply to but one particular city, county or township, and was not intended to and could never apply to any other, it was local and therefore unconstitutional. This act is nominally general; applies in terms to cities of the first class; abolishes commissioners of public buildings, for the use of courts and municipal purposes in such cities, created by special acts of assembly, and places all buildings heretofore under their control in the control of the department of public works. At the date of its passage there was just one city, one set of commissioners, one special act of assembly, one public building, to which it could apply; from the very nature of the case, there never could be another city in the first class to which the act could apply;

[8] 156 Pa. 539 (1893).

for it transfers to the department of public works buildings heretofore under the control of such commissioners; no matter how many cities come into this class, nor how soon they reach it, this act cannot apply to them, for their affairs have not heretofore been regulated by the special provisions of any such act as that of 1870."

As before stated the theory that legislation for classes is not special but general, rests upon the assumption that the law may some time be enjoyed by any other city or county as by natural increase in population it emerges from a lower class into a higher. It follows that even though the law may apply to more than one locality, if it does not make provision for such future increase, but is so framed that the classes are fixed and no other cities or counties may in future pass from one to another, it is invalid. Thus a classification based wholly or in part upon geographical distinctions will necessarily be rigid and unconstitutional. It was so held in *Com.* v. *Patton.*[9] Mr. Justice Paxson said in that case:

"The act of April 18, 1878, can hardly be said to be a classification of counties. It is true it speaks of all counties of more than 60,000 inhabitants. But it goes on to say, 'And in which there shall be any city incorporated at the time of the passage of this act with a population exceeding 8,000 inhabitants, situate at a distance from the county seat of more than twenty-seven miles by the usually traveled road.' This is classification run mad. Why not say all counties named Crawford, with a population exceeding sixty thousand, that contain a city called Titusville with a population of over eight thousand and situated twenty-seven miles from the county seat. Or all counties with a population of over sixty thousand, watered by a certain river or bounded by a certain mountain. There can be no proper classification of cities or counties to the perpetual exclusion of all others. The learned judge finds the fact that Crawford County is the only county in the state to which the act of April 18, 1878, can apply at the present time. Said act makes no provision for the future, in which respect it differs from the act of 1874 which, in express terms, provides for future cities and the expanding growth

[9] 88 Pa. 258 (1878).

of those now in existence. That is not classification which merely designates one county in the commonwealth and contain no provision by which any other county may by reason of its increase of population in the future, come within the class.

"We need not pursue the subject further. We are of opinion that the legislation referred to is special and within the prohibition of the constitution. This is decisive of the case, and renders a discussion of the other points involved unnecessary."

In *Blankenberg* v. *Black,* [10] an act was under discussion where an attempt had been made to legislate for Philadelphia County by classifying all counties in the state into two classes, viz: (1) counties which have their boundaries co-extensive with cities of the first class; (2) all other counties. The act was very properly held unconstitutional *inter alia* because it made no provision for future growth. While other counties may in future contain cities of the first class, it does not follow that those cities will have boundaries co-extensive with the county in which they are situated.

This decision condemning the so-called "Tax-Ripper" act, carried with it several other acts of the same character which had of late years been passed. The reason the classification was thought by the legislature to be valid may have been due in part to a dictum of the court in *Bennett* v. *Norton,*[11] where President Judge Rice, of Lucerne County, in an opinion afterward affirmed by the Supreme Court, said:

"But while it may not be probable, it is not impossible that some other city of the commonwealth may become co-extensive with the county."

Such a classification is unquestionably bad. Not only does it make no provision for the future, but there is no reasonable ground for making a distinction between counties of that kind and others. The pretended classification was a manifest subterfuge.

Thomas Raeburn White.

(*To be continued.*)

[10] Not yet reported.

[11] 171 Pa. 221 (1895).